

Permanent Disability Benefits

Most workers recover from their job injuries. But some continue to have medical problems. If your treating doctor says you will never recover completely and will always be somewhat limited in your ability to work, you have a **permanent disability**. This means you are probably eligible for **permanent disability (PD)** benefits.

PD benefits are payments that help make up for limitations in your ability to work in the *future*. However, you don't have to lose your *current* job to be eligible for PD benefits.

PD benefits are limited. If you lose income, PD benefits may not cover all the income lost. If you experience losses unrelated to your ability to work, PD benefits will not cover those losses.



Other Benefits Besides PD

If you are permanently disabled, you may also be eligible to receive:

- **Medical care** for your injury, described later in this factsheet.
- **Vocational rehabilitation** services to help you find another job. To find out about these services, get the factsheet "For More Information" (listed on page 8).
- Other financial help, such as **Social Security Disability Insurance** and benefits offered by some employers and unions. To find out about these benefits, get the factsheet "For More Information" (listed on page 8).

Inside:

Medical reports	2-3
Ratings	3-4
PD payments	5-6
Settlement	6

Your Treating Doctor's P&S Report

When you reach a point where your medical condition is not improving and not getting worse, your condition is called **permanent and stationary (P&S)**. When this happens, your treating doctor writes a **P&S report**.

The P&S report should describe:

- Specific medical problems, like how much you can move the injured parts of your body and how much pain you have. These are called **objective and subjective factors**.
- Limits on the work you can do. These are called **work restrictions**.
- Medical care that you may need in the future for your injury.

Your treating doctor sends the P&S report to the **claims administrator**. (This person handles workers' compensation claims for your employer and usually works for the employer's insurance company.)

Important! The P&S report will affect your future benefits. You have a right to receive a copy of it. Request in writing that the claims administrator or your doctor give you copies of all medical reports.

Your treating doctor must use special language to describe your disability. If you have questions, ask the doctor. Read the P&S report carefully, make sure it's complete, and see if you agree with the doctor's conclusions. Information left out could result in loss of some benefits.

Q. *I don't agree with the P&S report. What can I do?*

A. Sometimes different doctors have different opinions about a worker's disability. You have a right to question or disagree with the P&S report. Taking the following steps may help your case.

First, you can send a letter to the claims administrator stating that you disagree with the P&S report. In some cases, you must do this within a specific number of days after you received the report (20 days if you have an attorney, 30 days if you don't).

Second, you can get a medical opinion from another doctor. This could be either:


- a **QME** (qualified medical evaluator) — a doctor certified by the state **IMC** (Industrial Medical Council) and selected by either you, your attorney, or the claims administrator.

—or—

- an **AME** (agreed medical evaluator) — a doctor agreed upon by your attorney and the claims administrator.

If you don't have an attorney, the claims administrator must send you instructions on how to contact the IMC and select a QME. If you have an attorney, the attorney either will agree upon an AME with the claims administrator or will select a QME. The QME or AME will examine you and write a **medical-legal report** describing your condition.

Important! You or your attorney should choose the QME or AME carefully. The medical-legal report will affect your benefits. In most cases, you won't be allowed to see another QME or AME.

For more information about medical evaluations, call the IMC at  1-800-794-6900. Ask for their written guides "Your Medical Evaluation" and "Getting Your Medical Evaluation." See also the Department of Industrial Relations Web Site: www.dir.ca.gov.

Q. *If the claims administrator doesn't agree with the P&S report, can he or she send me to a QME or AME?*

A. Yes. Here is how the QME or AME is selected:

- If you don't have an attorney, you will be examined by a QME. The claims administrator must let *you* select the QME.
- If you have an attorney, the claims administrator either will agree upon an AME with your attorney or will select a QME.

Ratings of Your Disability


Next, your disability is rated. A **rating** is a percentage that estimates how much your injury affects your ability to work. It determines the amount of your PD benefits.

Ratings are based on four factors:

1. Your medical condition (described in P&S report or medical-legal report)
2. Your date of injury
3. Your age when injured
4. Your occupation (based on job you performed before injury).

A rating of 100% means that you have a permanent **total** disability — for example, if you lose the use of both hands. Ratings of 100% are very rare. A rating of between 1% and 99% means you have a permanent **partial** disability. Most injured workers' ratings are between 5% and 30%.

You, your attorney, or the claims administrator can ask a state **Disability Rater** to rate your disability. (If you were examined by a QME and don't have an attorney, a state Disability Rater will *automatically* rate your disability.) Also, the claims administrator and your attorney may estimate or try to predict a rating that a **Referee** (workers' compensation judge) would consider appropriate (see pages 4 and 6).

The "Schedule for Rating Permanent Disabilities" is used to rate disabilities based on four factors. There are two schedules, depending on your date of injury. To see the schedule that applies to you, contact a state Information & Assistance officer (see page 7). To buy a copy, call the California Department of General Services at  1-916-574-2200.

To view the schedule for workers injured April 1997 or later, go to the following Web site: www.dir.ca.gov. Link to: Division of Workers' Compensation/ Reports, Schedules, and Publications.

How Doctors' Reports Affect Ratings

Your medical condition, as described in the P&S report or medical-legal report, is the most important factor affecting ratings of your disability. (Your date of injury, age when injured, and occupation also affect ratings of your disability.)

Example: Sometimes different doctors have different opinions about a worker's disability. Here is how the opinions of three different doctors could affect the rating of a worker with a back injury (ratings not adjusted for age or occupation):

<u>Doctors' Reports</u>	<u>Rating</u>
Doctor 1: "Patient lost one-quarter of her ability to lift."	10%
Doctor 2: "Patient lost one-half of her ability to lift, bend, and stoop."	25%
Doctor 3: "Patient can only work half the time sitting and half the time standing or walking."	60%

Q. *I don't agree with the rating by the claims administrator. What can I do?*

A. You have a right to question or disagree with the rating. Different people reviewing the same medical report will sometimes rate a worker's disability differently.

You can negotiate with the claims administrator over the correct rating of your disability. You can request a rating by a state Disability Rater and use this rating in your negotiations. If you and the claims administrator can't agree on the rating of your disability, you can request that a Referee decide on the correct rating.

To get help, see page 7.

Q. *I don't agree with the rating by the state Disability Rater. What can I do?*

A. If you don't have an attorney, you can ask the state **Division of Workers' Compensation (DWC)** to review the rating. They will determine if mistakes were made in the medical evaluation process or the rating process. This is called **reconsideration** of your rating. You can also present your case to a Referee.

To get help in requesting reconsideration or presenting your case to a Referee, contact a state Information & Assistance officer (see page 7).

If you have an attorney, he or she can present your case to a Referee. Workers with attorneys *cannot* request reconsideration.

Determining PD Payments

PD benefit amounts are set by law. The claims administrator will determine how much to pay you based on three factors:

1. Rating(s) of your disability
2. Your date of injury
3. Your wages before you were injured.

Examples: Here are examples of the total amount that a worker could receive in PD benefits (for workers injured in 1997 or later, who earned more than \$300 per week before they were injured):

- If you have a rating of 30%, you may be eligible to receive approximately \$21,000 (total) in PD benefits.
- If you have a rating of 5%, you may be eligible to receive approximately \$2,000 (total) in PD benefits.

Receiving PD Payments

If you have a permanent *partial* disability, you are eligible to receive the total amount of your PD benefits spread over a fixed number of weeks. If you have a permanent *total* disability, you are eligible to receive a fixed level of PD payments for the rest of your life.

If you were receiving temporary disability benefits (TD), the first PD payment is due within 14 days after the final TD payment. If you weren't receiving TD, you could receive the first PD payment

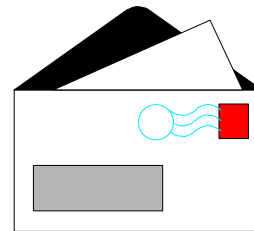
within 14 days after your treating doctor says your condition is permanent and stationary.

After the first payment, PD benefits must be paid every 14 days. They end when you reach the maximum amount allowed by law or when you settle your case and receive a lump sum. (See next page.)

Notices About PD Payments

The claims administrator must keep you up to date by sending letters that explain:

- How PD payment amounts were determined
- When you will receive PD payments
- Why PD payments will be delayed
- Why PD benefits won't be paid.



Q. *Is the claims administrator required to pay a penalty for delays in PD payments?*

A. Yes. If the claims administrator sends a payment late, he or she must pay you an additional 10% of the payment. This is true even if there was a reasonable excuse for the delay and even if the claims administrator sends a letter explaining the delay.

You could be awarded a substantial *extra* payment if there was *no* reasonable excuse for the delay.

For help with delays, see page 7.

Settlement Offers

After your disability is rated, the claims administrator usually asks you to **settle** your case. A settlement is an agreement between you and the claims administrator. There are two different ways to settle your case:

1. Stipulations with Request for Award (“Stips”)

- **Payments.** You and the claims administrator agree on when and how long you’ll continue to receive PD payments. You also agree on how much each payment will be.
- **Medical care.** The claims administrator agrees to keep paying for medical care for your injury, as long as care is needed.
- **Possible additional benefits.** If your condition gets worse, you have a right to request additional workers’ compensation benefits. Usually this request must be made within five years after the date of your injury.

2. Compromise and Release (“C&R”)

- **One payment.** The claims administrator agrees to pay you a lump sum. This covers both the PD payments you haven’t received yet,

the estimated cost of future medical care for your injury, and all other benefits except vocational rehabilitation. (Vocational rehabilitation benefits cannot be included in a C&R unless certain conditions are met.) If you have questions, see page 7.

- **No further medical care.** Because the lump sum covers the estimated cost of future medical care, the claims administrator will no longer pay your doctor. This becomes your responsibility.
- **No additional benefits.** You don’t have the right to request additional workers’ compensation benefits if your condition gets worse.

If you and the claims administrator agree on a settlement, a **Referee** (workers’ compensation judge) must approve it.

Q. *What if I don’t agree with the claims administrator’s settlement offers?*

A. You are not required to accept the claims administrator’s offers. You can negotiate a settlement. If you can’t reach an agreement with the claims administrator, you can present your case to a Referee. The Referee will decide what benefits you will receive. This decision is called a **Findings and Award**. It will be sent to you in writing.

Negotiating a settlement or presenting your case to a Referee can be difficult. To get help, see page 7.

KEEP YOUR CLAIM ON TRACK

Some injured workers get their benefits quickly, with no trouble at all. Others face problems and delays. This page gives tips on how to take charge of your case and make sure your rights are protected.

Whether or not you have a problem:

- ◆ **Keep good records.** You will probably fill out and receive many forms and other papers. Keep copies of *everything*, including envelopes showing postmarks!
 - Keep notes of all discussions you have with the people involved in your claim.
 - Keep track of your medical condition and how it affects your ability to work.
 - Request in writing that the claims administrator give you copies of all medical reports and other documents.
 - Save pay stubs and time sheets showing your income, the dates you worked, and when you were off work.
 - Keep records of any out-of-pocket expenses that workers' compensation could cover (like prescriptions or travel costs to medical appointments).
- ◆ **Learn more about workers' compensation.** The laws and procedures in workers' compensation are complicated. What applies to another injured worker may not apply to you. Learn what your rights are, and don't be afraid to ask questions. To get the factsheet "For More Information," see page 8.

If you have a concern, speak up. See whether **your employer** or **the claims administrator** can agree to resolve the problem. If this doesn't work, don't delay getting help. Try the following:

- ◆ **Contact an Information & Assistance officer.** State I&A officers answer questions and help injured workers. They may provide information and forms and help resolve problems with your claim. They hold workshops around the state. To contact a local office, check the Government Pages at the front of the white pages of your phone book. Look under: State Government Offices/Industrial Relations/Workers' Compensation.
- ◆ **Consult an attorney.** Lawyers who specialize in helping injured workers with their workers' compensation claims are called **applicants' attorneys**. Their job is to plan a strategy for your case, gather information to support your claim, keep track of deadlines, and represent you in hearings before a **Referee** (workers' compensation judge) of the **Workers' Compensation Appeals Board**. Most attorneys offer one free consultation. If you hire an attorney, the attorney's fee will be taken out of benefits that you receive later. A Referee must approve the fee. For names of applicants' attorneys, call the State Bar (☎ 1-415-241-2100), a local bar association, or the California Applicants' Attorneys Association (☎ 1-800-459-1400).
- ◆ **Contact your union.** Your union may be able to help resolve problems, tell you about other benefits, negotiate changes needed in your job, and protect you from job discrimination.
- ◆ **Represent yourself.** If you can't get help from the above resources, you can prepare your own case and request a hearing before a Referee. For instructions, contact an Information & Assistance officer (see above).

This is one of a series of factsheets, which include:

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- What Every Worker Should Know (#1)
(workers' compensation benefits and choosing a doctor in case you are hurt on the job)
- After You Get Hurt on the Job (#2)
(steps to take, getting appropriate medical care, working while recovering, other financial help, and facts about job discrimination)
- Temporary Disability Benefits (#3A)
(payments while you are recovering from a job injury or illness)
- For More Information (#4)
(written materials, places to seek help with your claim, and other types of assistance)
- Hurt on the Job? Information Alert for Teens
(Factsheet for Young Workers)

To obtain these factsheets, contact the state Division of Workers' Compensation. Call toll-free ☎ 1-800-736-7401, or check the Government Pages at the front of the white pages of your phone book and look up: State Government Offices/Industrial Relations/Workers' Compensation/Information & Assistance. To view the factsheets, go to the following Web site (many public libraries provide access to the Web): **www.dir.ca.gov**. Through this Web site, link to: Commission on Health and Safety and Workers' Compensation.

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The information in this factsheet is true in most situations. However, some **rules, exceptions, and deadlines** not covered here may apply to you and affect your case. To learn more, see the factsheet For More Information.

The information here describes the California workers' compensation system as of January 1998. It applies to most private, state, and local government employees whose "date of injury" is 1994 or later.